

## Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed February 11, 2004. Claims 54-61 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected claims 54-61. The present Response adds claims 62 and 63, leaving for the Examiner's present consideration claims 54-63. Reconsideration of the rejections is requested.

### I. REJECTION UNDER 35 U.S.C. §102(B) OVER *ZUCHERMAN* (U.S. PAT. NO. 5,836,948)

#### *Claims 54, 55, 58, and 59*

The Examiner rejected claims 54, 55, 58, and 59 under 35 U.S.C. § 102(b) as being anticipated by *Zucherman*. The Applicants respectfully traverse the rejection.

Referring to Figure 40, *Zucherman* discloses a plurality of cannulas. A first cannula having a "somewhat conical" shape is inserted between spinous processes and at least one "slightly bigger" cannula slides over the first cannula like a sleeve, incrementally enlarging the opening of the skin. See column 9, lines 46-52. The first cannula is conically shaped to pierce a ligament between spinous processes, and force an initial opening. The successive cannulas, as shown in Figure 40, slide over the preceding cannulas to further enlarge the opening in an incremental fashion and to supplant the first cannula, which can then be withdrawn. The successive cannulas do not include tapered, curved tips. Nowhere does *Zucherman* disclose that a successive cannula includes a tapered curved tip.

*Zucherman* fails to disclose a series of dilators (or devices) wherein each of the dilators (devices) in the series of dilators (devices) includes a tapered tip. Since *Zucherman* fails to disclose all of the features of claim 54 and 58, *Zucherman* cannot anticipate claims 54 and 58 under 35 U.S.C. §102(b). Claim 55 depends from claim 54, and claim 59 depends from claim 58. Dependent claims have at least the features of the independent claim from which they depend; therefore, *Zucherman* cannot anticipate

claims 55 and 59 under 35 U.S.C. §102(b). Accordingly, the Applicants respectfully request withdrawal of this rejection.

## **II. REJECTION UNDER 35 U.S.C. §103(A) OVER *ZUCHERMAN***

### ***Claims 56, 57, 60 and 61***

The Examiner rejected claims 56, 57, 60 and 61 under 35 U.S.C. § 103(b) over *Zucherman*.

The Applicants respectfully traverse this rejection.

For the reasons described in Section I above, *Zucherman* fails to teach or suggest all of the features of claims 54 and 58. Claims 56 and 57 depend from claim 54, and claims 60 and 61 depend from claim 58. Dependent claims have at least the features of the independent claim from which they depend; therefore, *Zucherman* fails to teach or suggest all of the features of claims 56, 57, 60 and 61. Since *Zucherman* fails to teach or suggest all of the features of claims 56, 57, 60 and 61, *Zucherman* cannot render claims 56, 57, 60 and 61 obvious under 35 U.S.C. § 103(b)

## **III. ADDITION OF CLAIMS**

### ***Claims 62 and 63***

The newly added claims are, it is submitted, allowable over the cited art.

## **IV. CONCLUSION**

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned before an advisory action is issued in order to avoid any unnecessary filing of an appeal.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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By:   
Michael L. Robbins  
Reg. No. 54,774

FLIESLER MEYER LLP  
Four Embarcadero Center, Fourth Floor  
San Francisco, California 94111-4156  
Telephone: (415) 362-3800